

CLARK COUNTY LUMBER CO.

APRIL 3 (legislative day, MARCH 30), 1942.—Ordered to be printed

Mr. BROOKS, from the Committee on Claims, submitted the following

R E P O R T

[To accompany H. R. 6063]

The Committee on Claims, to whom was referred the bill (H. R. 6063) for the relief of the Clark County Lumber Co., having considered the same, report favorably thereon with the recommendation that the bill do pass without amendment.

The facts are fully set forth in House Report No. 1731, Seventy-seventh Congress, second session, which is appended hereto and made a part of this report.

[H. Rept. No. 1731, 77th Cong., 2d sess.]

The Committee on Claims, to whom was referred the bill (H. R. 6063) for the relief of the Clark County Lumber Co., having considered the same, report favorably thereon with an amendment and recommend that the bill, as amended, do pass.

The amendment is as follows:

Page 1, line 8, strike out "through an error in the" and insert in lieu thereof "in complying with".

The purpose of the proposed legislation is to pay to the Clark County Lumber Co. the sum of \$363.95 for additional cost incurred in complying with Arkansas State procurement office purchase order No. 63-3332, dated September 18, 1937, covering the purchase of lumber to be delivered to Lakeview project, Lakeview, Ark.

STATEMENT OF FACTS

On September 10, 1937, the Treasury Department State procurement office, Little Rock, Ark., requested bids for four items of lumber, delivery to be made to the United States Government, Resettlement Administration, care of R. P. Yount, area construction superintendent, Lakeview, Ark.; that the Clark County Lumber Co. submitted a bid in the amount of \$1,676.70 for lumber to be delivered to Lakeview, Ark., it being the understanding of Clark County Lumber Co. that the delivery was to be made to the Lakeview, Ark., in which they resided; however, after the award was made to them, it was discovered that delivery was to be to Lakeview, Ark., located near the other end of the State, and as a result thereof, they sustained losses in the amount of \$362.95.

The Comptroller General, under date of December 18, 1941, recommends as follows:

"However, it may be, as alleged by the company, that an error actually was made in its bid by reason of a misunderstanding on its part as to the point to

which the Government desired the lumber to be delivered. The company has furnished invoices from certain suppliers in support of its contention that the cost to it of furnishing the lumber to the Government was \$2,023.08. Since the contract price paid to the company for the lumber is \$1,660.13, the company claims it suffered a loss of \$362.95 on the transaction, which amount the bill proposes to authorize be paid to the company. The sum of \$2,023.08 is less than the amount of the next lowest bid. In view of such circumstances, this office would recommend favorable consideration of the bill if it be amended by striking out the words 'through an error in the' in line 8, and inserting in lieu thereof the words 'in complying with'. The error arose by reason of a misunderstanding on the part of the company as to the contract delivery point and not by reason of an error in the purchase order, as stated in the bill. Hence, the bill in its present form contains a misstatement of fact."

Your committee, after carefully considering the merits of the case, concur in the recommendation of the Comptroller General, and have amended the bill to comply with its suggestions.

Appended hereto is the report of the Comptroller General, together with other pertinent evidence.

GENERAL ACCOUNTING OFFICE,
Washington, December 18, 1941.

HON. DAN R. MCGHEE,
Chairman, Committee on Claims,
House of Representatives.

MY DEAR MR. CHAIRMAN: Further reference is made to your letter of December 4, 1941, acknowledged December 5, requesting a report on bill H. R. 6063, Seventy-seventh Congress, entitled "A bill for the relief of the Clark County Lumber Co.," which bill provides as follows:

"That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to the Clark County Lumber Co. the sum of \$362.95 in full settlement of all claims against the United States for additional costs incurred by them through an error in the Arkansas State procurement office purchase order No. 63-3332 dated September 18, 1937, covering a purchase of lumber to be delivered to Lake View project, Lake View, Ark.: * * *."

The Treasury Department, State procurement office, Little Rock, Ark., by invitation No. 1081, dated September 10, 1937, requested bids on four items of lumber of various sizes, comprising one lot. With respect to the place and time of delivery, bidders were advised in the invitation as follows:

"Place of delivery.—Delivery shall be made to the United States Government: Resettlement Administration, care of R. P. Yount, area construction superintendent, Lake View, Ark.

"Time of delivery.—Upon receipt of purchase order unless otherwise instructed the bidder shall consult R. P. Yount, area construction superintendent, United States Department of Agriculture, Resettlement Administration, Construction Division, Wabash, Ark.

In response to the invitation, the Clark County Lumber Co. submitted a bid dated September 13, 1937, proposing to furnish the lot of lumber for a total price of \$1,676.70, and in the space provided for naming the f. o. b. point, the company inserted "Lake View, Arkansas." The bid of the company as to the four items comprising the lot of lumber was accepted on September 17, 1937 (contract ER-Tps-63-7638), and purchase order 63-3332 was issued on September 18, 1937. The lumber was delivered on various dates during November 1937, and payment was made therefor at the contract price by check dated December 31, 1937. Subsequently, the company alleged that its bid was computed on the basis of delivering the lumber to Lakeview in Clark County whereas it was required to deliver the lumber to Lakeview in Phillips County and by reason thereof it requested payment of an additional amount of \$362.95 by reason of the longer haul required in the delivery of the lumber. The claim was disallowed by settlement of this office dated October 22, 1938. Upon the request of the claimant for further consideration of its claim the matter was reviewed and the action taken in said settlement was sustained by decision of January 4, 1939, A-99876, copy of which is enclosed herewith.

The established rule is that when a bidder has made a mistake in the submission of a bid and the bid has been accepted, he must bear the consequences thereof unless the mistake was mutual or the error so apparent that it must be presumed that the contracting officer knew of the mistake and sought to take advantage

thereof (26 Comp. Dec. 286; 6 Comp. Gen. 526; 8 id. 362; 18 id. 942; 20 id. 652; *Ellicott Machine Co. v. United States*, 44 Ct. Cls. 127; *American Water Softener Co. v. United States*, 50 Ct. Cls. 209; *United States v. Conti*, 119 F. (2d) 652; *Star-Chronicle Publishing Co. v. New York Evening Post* (C. C. A. 2), 256 F. 435, 442; *Steinmeyer v. Schroepfel*, 226 Ill. 9, 80 N. E. 564, 10 L. R. A. (N. S.) 114, 117 Am. St. Rep. 224; *Leonard v. Howard et al.*, 67 Ore. 203, 135 Pac. 549; *Brown v. Levy*, 29 Tex. Civ. App. 389, 69 S. W. 255; *Daddario v. Town of Milford* (Mass.), 5 N. E. (2d) 23, 107 A. L. R. 1447).

The Standard Government Instructions to Bidders, to which the attention of all bidders was invited in the invitation, provide in paragraphs 14 and 19, as follows:

"*Withdrawal of bids.*—Bids may be withdrawn on written or telegraphic request received from bidders prior to the time fixed for opening. Negligence on the part of the bidder in preparing the bid confers no right for the withdrawal of the bid after it has been opened.

* * * * *

"*Errors in bid.*—Bidders or their authorized agents are expected to examine the maps, drawings, specifications, circulars, schedule, and all other instructions pertaining to the work, which will be open to their inspection. Failure to do so will be at the bidder's own risk, and he cannot secure relief on the plea of error in the bid. In case of error in the extension of prices the unit price will govern."

The responsibility for the preparation of the bid submitted in response to the invitation was, of course, upon the bidder. Consequently, if the Clark Lumber Co. knew there were approximately one-half dozen communities in the State of Arkansas known as Lake View—as stated in its letter of October 24, 1938—it would appear that it should have ascertained the exact location to which the Government desired the lumber to be delivered before submitting its bid. Insofar as the record shows, the other bidders understood from the invitation where the Government desired the lumber to be delivered. With respect to this matter, it was stated in the decision of January 4, 1939, *supra*, as follows:

"If you were aware there were a half-dozen communities in Arkansas known as Lake View and were in doubt which location delivery was desired by the Government, it was your duty to make inquiry with respect thereto prior to the submission of your bid. While the United States Official Postal Guide, July 1937, does not show that a post office was at that time located at Lake View, Phillips County, it is to be noted that said Postal Guide does not show a post office located at Lake View, Clark County. Rand McNally Commercial Atlas and Marketing Guide, 1937, shows only one town of Lake View and that is the one located in Phillips County where delivery was required by the Government. Said atlas shows that Lake View, Phillips County, is located on the Missouri Pacific Railroad and that the town receives mail from Helena. In any event, the question as to whether there was or was not a post office at the delivery point is not controlling in the matter since the place for delivery actually intended was sufficiently identified in the above-quoted stipulation of the invitation.

"There is no evidence that the purchasing agency withheld from you any fact peculiarly within its knowledge which it was under obligation to disclose, or that you were misled to your prejudice by any representation made to you. The responsibility for the preparation, computation, and submission of the bid was yours. If you failed to obtain in advance the information necessary to protect your own interests in the formulation and submission of the bid, that fact can impose no liability upon the Government. The bid was regular upon its face, offered delivery for a sum certain to a point in accordance with the invitation for bids, there was nothing to put the contracting officer on notice of any such error as now alleged, the bid was accepted as made, and constituted a contract binding you to make deliveries to the destination specified, for the price stipulated."

However, it may be, as alleged by the company, that an error actually was made in its bid by reason of a misunderstanding on its part as to the point to which the Government desired the lumber to be delivered. The company has furnished invoices from certain suppliers in support of its contention that the cost to it of furnishing the lumber to the Government was \$2,023.08. Since the contract price paid to the company for the lumber is \$1,660.13, the company claims it suffered a loss of \$362.95 (\$2,023.08 minus \$1,660.13) on the transaction, which amount the bill proposes to authorize be paid to the company. The said sum of \$2,023.08 is less than the amount of the next lowest bid. In view of such circumstances, this office would recommend favorable consideration of the bill if it be amended by striking out the words "through an error in the" in line 8 and inserting in lieu thereof the words "in complying with." The error arose by reason of a mis-

understanding on the part of the company as to the contract delivery point and not by reason of an error in the purchase order, as stated in the bill. Hence, the bill in its present form contains a misstatement of fact.

Sincerely yours,

LINDSAY C. WARREN,
Comptroller General of the United States.

AFFIDAVIT

Comes Ralph Williams and states on oath:

I am secretary-treasurer of the Clark County Lumber Co., Inc., Arkadelphia, Ark., and I am personally familiar with contract No: ER-TPS-63-7638, executed in 1937 and providing for delivery of a quantity of lumber to the Resettlement Administration at Lakeview, Ark.

The invitation to bid was sent me by the State procurement office. Prior to receipt of this bid I had received a number of bids from the same office for Work Progress Administration materials and without exception these invitations called for delivery in the Arkadelphia trade territory. In this county there is located a community which for years has been commonly called Lakeview but which has no post office. At the time I received this bid the Resettlement Administration had purchased a large area of farm land near Lakeview Community and was preparing to erect a number of farm homes there. The natural assumption was that the invitation to bid referred to Lakeview, Clark County, Ark., since the invitation did not designate any particular county. But before entering the bid I made the following investigation to determine the location of Lakeview referred to in the invitation:

1. I went to the local office of the Arkansas Automobile Club and consulted the official highway map of the Arkansas State Highway Department. No such town was designated thereon.

2. The president of the Clark County Lumber Co. consulted the Arkadelphia postal authorities and was informed that no such post office existed.

3. I inquired of the County Work Projects Administration engineer, Mr. Alvin Thomas (now deceased) and he informed me of the contemplated building program near Lakeview in this county and told me that undoubtedly the invitation to bid referred to this project. The same information was given me by Mr. J. C. Cuffman, who at that time was connected with the district office of the Work Projects Administration.

On the strength of the above information and assurances the Clark County Lumber Co. entered a bid and was the successful bidder. Whereupon we were notified to deliver the lumber to Lakeview, Phillips County, Ark., a county located on the opposite side of the State from Clark County. I immediately notified the State procurement office and told them of the error. The latter office told me that the Clark County Lumber Co. would be compelled to make delivery and could file claim for the loss sustained. They insisted on delivery because they were in urgent need of the material. Satisfactory proof of an actual loss of \$364.67 was submitted to them. Mr. L. L. Thornhill, State procurement officer, recommended payment of the claim on the ground that since our bid was 20 percent lower than the next lowest bid, the inspector of bids should have realized that error had been made. Further error admitted on the part of the Government was the failure to designate the name of the county in the invitation to bid.

By virtue of being required to fulfill the contract the Clark County Lumber Co. sustained an actual loss of \$364.67 for which it has never been compensated.

The invitation for bids contained the following stipulation:

"Time of delivery: Upon receipt of purchase order, unless otherwise instructed, the bidder shall consult R. P. Yount, area construction superintendent, United States Department of Agriculture, Resettlement Administration, Construction Division, Wabash, Ark."

As a matter of practice the area superintendent never required that he be consulted by the successful bidder. The successful bidder's name was always forwarded to the county or project supervisor and the latter either made contact with the bidder or the bidder contacted the supervisor. Therefore the fact that the address of the area superintendent might be some distance away never served as any precedent for locating the situs of the project.

RALPH WILLIAMS.

Subscribed and sworn to before me this 27th day of October 1941.

[SEAL]

PALLIE NOLAN, *Notary Public.*

My commission expires April 3, 1945.

AFFIDAVIT

Comes George W. Peck and states on oath:

I am president of the Clark County Lumber Co. of Arkadelphia, Ark., and have carefully read the affidavit of Ralph Williams relative to the claim for loss under contract No. ER-TPS-63-7638.

Mr. Williams and I worked together on this contract and especially in efforts to locate Lakeview, Ark., and I know the facts on this point, as set forth in his affidavit, to be true and correct.

I consulted the Postal Guide at that time and was unable to locate a post office by that name. We were unable to locate any place by the name of Lakeview except a community in this county which has long been so designated.

GEO. W. PECK.

Subscribed and sworn to before me this 27th day of October 1941.

[SEAL]

PALLIE NOLAN, *Notary Public*.

My commission expires April 3, 1945.

AFFIDAVIT

Comes J. C. Cuffman and states on oath:

In 1937 I was connected with the district Works Progress Administration office of the Hope, Ark., district, of which district Clark County was a part.

I am acquainted with Ralph Williams, of Arkadelphia, Ark., and remember that some time in the fall of 1937 he informed me he was bidding on a lumber contract with the Resettlement Administration. He inquired of me as to the location of Lakeview, Ark. The only such community to my knowledge in the counties in my area was the community in Clark County known as Lakeview. I was born and reared in Clark County and I have known of this community being referred to as Lakeview all my life.

J. C. CUFFMAN.

Subscribed and sworn to before me this 27th day of October 1941.

[SEAL]

PALLIE NOLAN, *Notary Public*.

My commission expires April 3, 1945.

AFFIDAVIT

Comes George Dews and states on oath:

I am Secretary of the Arkadelphia Chamber of Commerce and held such position in 1937. At that time there was maintained in connection with my office, and in my charge, an information bureau of the Arkansas Automobile Club. The bureau was being furnished with official road map by the Arkansas Highway Department for the benefit of the public. I recall the occasion when Messrs. Ralph Williams and George W. Peck came to the bureau and I assisted them in efforts to locate a town by the name of Lakeview. I cannot give the date, but I do remember that search we made. We came to the conclusion at that time that the only town or community with that name was the one in Clark County. I have lived in this county for a number of years and I have always heard of the name "Lakeview" with reference to a farming community in Clark County.

GEORGE DEWS.

Subscribed and sworn to before me this 27th day of October 1941.

[SEAL]

PALLIE NOLAN, *Notary Public*.

My commission expires April 3, 1945.

AFFIDAVIT

Comes Joseph Callaway and states on oath:

In the fall of 1936 I sold to the Resettlement Administration a large tract of farm land between Arkadelphia and Gurdon, Ark. This land is located near what has been known for a number of years as Lakeview Community. The Resettlement Administration divided this land into parcels and early in 1937 they made preparations to build a number of farm homes on the various tracts.

CLARK COUNTY LUMBER CO.

I was born and reared in Clark County and have lived here all of my life and I have heard of Lakeview, Clark County, all of these years.

JOSEPH CALLAWAY.

Subscribed and sworn to before me this 27th day of October 1941.

[SEAL]

PALLIE NOLAN, *Notary Public.*

My commission expires April 3, 1945.